



July 26, 2011

Superintendent ****

Stephanie Zickefoose, Director
Yellowstone/West Carbon County

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION
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RE: **FINAL REPORT** for In the Matter of *** Case # 2011-05, Alleged Violations of the Individuals With Disabilities Education Act (IDEA).

Dear ***, Ms. Zickefoose, and Superintendent ***:

This is the Final Report pertaining to the above state special education complaint filed pursuant to the Administrative Rules of Montana (ARM) 10.16.3662. **** ("Complainant"), parent and special education teacher of *** ("Student"), alleges the Special Education Co-operative Director of Yellowstone/West Carbon County ("Co-op director") planned and held an IEP meeting and failed to invite Complainant to participate in the meeting in violation of the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400 et seq., Montana special education laws, Title 20, Ch. 7, MCA, and corresponding regulations at 34 CFR Part 300 and ARM 10.16.3007 et seq.

A. Procedural History

1. On May 31, 2011, the Montana Office of Public Instruction (OPI) received a Complaint signed by Complainant against the Co-op Director. ARM 10.16.3662(1) provides that a complaint may be filed against a local educational agency, i.e. the **** School District ("District"). For purposes of this Complaint, the Co-op is considered to be an agent of the District.
2. Complainant chose not to use the services of the OPI Early Assistance Program pursuant to ARM 10.16.3660 and a Request for Written Response was sent to the Co-op as the School District representative on June 14, 2011.
3. The Co-op provided a written response to the Complaint dated June 21, 2011.

4. An investigator was appointed. Contacts were made with Complainant, the Co-op Director, and the District Superintendent. The Student's educational records and other documents submitted by the Co-op and Complainant were reviewed.

B. Legal Framework

The OPI is authorized to address violations of the IDEA and Montana special education laws through this special education procedure as described in 34 CFR §§ 300.151-153 and ARM 10.16.3661-3662. This Complaint examines the parameters of an IEP meeting implicit in 34 CFR § 300.320 through 34 CFR § 300.324 which detail the development, review, and revision of an IEP; the constituents of an IEP team; and the requirement for parental participation.

C. Findings of Facts

1. Complainant has standing to file this Complaint under the Montana special education complaint process provided for in ARM 10.16.3661.
2. The Co-op is an agent of the District for the purposes of providing special education services to eligible students in the District.
3. The Student is in grade school and receives special education services from the District.
4. Complainant is a parent of the Student.
5. Complainant is also the Student's special education teacher and IEP case manager.
6. Complainant and the Student's father are divorced.
7. On July 28, 2010 the father emailed the principal a list of concerns regarding his son's education and lack of communication with District staff.
8. When he did not hear back, he contacted the Co-op Director seeking to file a complaint against the District. The Co-op Director agreed to meet with him to discuss his concerns.
9. The Co-op Director and the father met August 10, 2010 and discussed concerns related to his son's special education needs and the District's lack of communication with him, which he attributed to the fact that the District likely assumed there was adequate communication because Complainant was the Student's special education teacher, although this was not the case. The father then requested to meet with the principal and superintendent.
10. A meeting was held August 26, 2010 with the father, principal, superintendent, Co-op Director and a speech pathologist to discuss the father's concerns.
11. At the meeting the principal stated the meeting was a parent meeting, not an IEP meeting.

12. No IEP Notice had been sent out by the District. No other formal IDEA procedural measures were taken. No documents were drafted or signed. No changes were made to the Student's IEP.
13. An IEP meeting was held on September 8, 2010. Participants included the Co-op Director, the superintendent, the principal, an occupational therapist, a physical therapist, a speech-language pathologist, a PLUK representative, a paraprofessional, a first grade teacher, a second grade teacher, the father, and Complainant.

D. Analysis and Conclusions of Law

Issue: Whether the District held an IEP meeting without notice to Complainant resulting in a violation of IDEA or Montana special education provisions.

Complainant alleges the Co-op Director failed to give her adequate opportunity to participate in the development of her child's IEP by holding an IEP meeting without notice to her. She argues the director attempted to circumvent her right to participate in an IEP meeting by meeting with her ex-husband without her being present.

The District states the meeting at issue was not an IEP meeting. The principal clearly announced at the meeting that it was **not** an IEP meeting and no notice for the meeting was sent out because it was a meeting with the Student's father based on his request to discuss the Student's status at school and in special education.

Parents must be provided with an opportunity to participate in the creation of their child's Individualized Education Program. 34 CFR § 300.322. In this situation, the Student's mother is the Student's special education teacher. The Student's father and mother are divorced. In the summer of 2010, the father began to inquire about the Student's education and about the lack of communication between him and the school regarding the Student. When the District did not promptly respond to his emailed concerns, he contacted the Co-op Director to inquire about filing a grievance. The Director agreed to meet with him, and did so on August 10, 2010.

At the meeting the father raised concerns regarding lack of communication by the teacher, principal, and superintendent; delay and inadequate notice of IEP meetings; extended school year services (ESY); and progress reports, incomplete daily logs, and placement in the regular education setting. He expressed concern that because the mother was an employee of the District, his concerns were not recognized by the administration. He requested a meeting with the principal and superintendent. The Co-op Director arranged for the visit. The District decided

that a parent meeting with the father prior to any IEP meeting would be appropriate and “hopefully prevent the IEP meeting from being derailed by high emotions.” At that time, the Director also brought to the attention of the principal the potential FAPE issues raised by the father.¹

A meeting was scheduled for August 26, 2010 to include the superintendent, the principal, the Co-op Director, and the father. The Co-op Director visited with the speech/language pathologist who was at school preparing for the upcoming school year and invited her to the meeting in an effort to increase communication with the Student’s father. At the meeting the father discussed his list of concerns regarding ESY, inclusion, and communication. The Co-op Director reported that the concept of ESY was discussed at length due to the father’s misunderstanding of ESY. The administrators sought to assure the father they would focus on better communication in the upcoming year. No documents were signed and no IEP was written or changed at the meeting. A properly noticed IEP meeting was held on September 8, 2010, which was attended by both parents.

Complainant alleges the August 26, 2010 meeting was an IEP meeting from which she was excluded in violation of parent participation regulations at 34 CFR § 300.322 and presumably the prior written notices requirements at 34 CFR § 300.503.² Complainant argues she should have received an invitation or notice of the meeting due to both her roles as the mother and the special education teacher.

The question is whether the meeting on August 26, 2010 constituted an IEP meeting as contemplated by the IDEA. While the IDEA does not specifically define “IEP meeting,” it does provide detail regarding an Individualized Education Program, including the development, review, and revision of an IEP and participation by the IEP team members (including parents). See 34 CFR § 300.320 through 34 CFR § 300.324. Parental concerns may be discussed at any time, but actual IEP changes to the identification, evaluation, or educational placement of a child, or the provision of FAPE, must take place during a formal IEP meeting to which the relevant parties are given written notice.³

The IDEA contemplates parties will be informed and prepare for IEP meetings prior to the actual IEP meetings, although final decisions and open discussion

¹ This investigation does not ignore the fact that while Complainant was a parent of the Student, she also served as his case manager and special education teacher. In these capacities, her employer and its agent, the Co-op, appropriately sought to minimize potential conflicts between Complainant’s various roles and her rights as a parent.

² Complainant quotes an unnamed “aforementioned book on special education law,” not 34 CFR § 300.322 or § 300.503.

³ Or by amendment pursuant to 34 CFR §300.324(a)(4).

with regard to IEP content must be made at the IEP meeting and may not be predetermined by the district. *Brown v. Bartholomew Consolidated School Corp.*, 442 F.3d 588, 45 IDELR 147 (7th Cir.2006).

At the August 26, 2010 meeting, the principal explained the meeting was a parent meeting, held at the request of the father, and not an IEP meeting. While both administrators who frequently attended IEP meetings were present that day, all IEP team members were not present or invited because the attendees had no intention of holding a formal IEP meeting. School personnel and parents are not prohibited from meeting outside of an IEP meeting to discuss educational concerns affecting a child. Even if all usual IEP team members were present at a parent meeting, such a meeting would not automatically be deemed an IEP meeting. A district must be clear and deliberate in planning an IEP meeting. Here, no IEP notice was sent out and no changes were made to the IEP as contemplated in 34 CFR § 300.320 through 34 CFR § 300.324.

Complainant misconstrues the requirements of prior written notice required by 34 CFR § 300.503 and the right of parent participation provided for in 34 CFR § 300.322. Section 34 CFR § 300.322 requires invitation by notice to a parent for all IEP meetings, and notice is required anytime a decision is made to “initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.” 34 CFR §300.503. Notice must be provided prior to implementing the proposed changes.

Further, the IDEA also contemplates that districts and parents work in partnership for the benefit of the student which could mean a district holds parent meeting with one parent or both parents outside of the IEP meeting particularly when parents may be at odds or, as here, one parent plays several roles as parent, teacher, and case manager of the Student. The District’s supervisory duties and responsibilities over Complainant as a District employee are a factor in this unique situation. This state complaint process will not interfere with that relationship.

Parental input and participation is an important and integral part of the IEP process. Complainant, as mother, special education teacher, and IEP case manager for her son, had extensive participation in the IEP process. For various reasons, it appears the father felt he did not have adequate access and participation in Student’s IEP process. Under these unique circumstances, it was more than reasonable for the District to accept the father’s invitation to meet and address his concerns. The meeting cannot be considered to be an IEP meeting under the IDEA. The allegations in the Complaint are not substantiated by this investigation.

E. Disposition

Having found no violations of IDEA by the District or Co-op, the Complaint is **DISMISSED**.

Sincerely,

Ann Gilkey, Compliance Officer

c: Mary Gallagher, Director, Dispute Resolution/EAP